

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 143

Citations Affected: IC 16-18-2; IC 16-41-39.4.

Synopsis: Lead poisoning prevention. Conference committee report for ESB 143. Specifies certain requirements for laboratories, the state department of health, local health departments, and retail establishments related to childhood lead poisoning prevention. Provides for certain actions by the state department of health for noncompliance with certain provisions. Establishes the childhood lead poisoning prevention fund for outreach and prevention activities. Establishes a lead-safe housing advisory council to make recommendations related to lead poisoning prevention. Requires interim study of issues concerning requirements for the division of family resources, child care providers, and children related to childhood lead poisoning prevention. Makes conforming and technical amendments. (The introduced version of this bill was prepared by the health finance commission.) **(This conference committee report: (1) removes language: (A) requiring abortion clinics to be evaluated for lead hazards; (B) requiring the state department of health to inform the school about a child if the state department has received a report concerning the presence of lead in the child and requiring the school to keep the information confidential; (C) requiring a housing unit that has been determined to have caused or contributed to elevated blood lead levels to submit a remediation plan and complete remediation within a specified time frame, requiring owners of rental units to relocate tenants in specified instances, and prohibiting rental unit owners from taking retaliatory action against a tenant for reporting the presence of lead hazards; and (D) establishing a cause of action for a consumer or user who is injured by a hazardous substance; (2) changes the amount of the civil penalty for failing to provide a complete report on the presence of lead in an individual's blood to \$1,500; (3) changes reporting dates for the lead-safe housing advisory council to submit a preliminary report to November 1, 2008, and a final report to November 1, 2009; and (4) requires a retail establishment that sells paint or paint products to ensure that at least one employee who provides advice to customers concerning paint and paint products attend a lead hazards training program and provide the training to other employees.)**

Effective: Upon passage; July 1, 2008.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 143 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 16-18-2-9.3 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: **Sec. 9.3. "Advisory council", for purposes of**
- 5 **IC 16-41-39.4, refers to the lead-safe housing advisory council**
- 6 **established by IC 16-41-39.4-6.**
- 7 SECTION 2. IC 16-18-2-56.2 IS ADDED TO THE INDIANA
- 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 9 [EFFECTIVE UPON PASSAGE]: **Sec. 56.2. "Clearance**
- 10 **examination", for purposes of IC 16-41-39.4, means an activity**
- 11 **conducted by a clearance examiner who is licensed under**
- 12 **IC 13-17-14 to establish proper completion of interim controls (as**
- 13 **defined in 24 CFR 35.110).**
- 14 SECTION 3. IC 16-18-2-69.2 IS ADDED TO THE INDIANA
- 15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 16 [EFFECTIVE UPON PASSAGE]: **Sec. 69.2. "Consumer product",**
- 17 **for purposes of IC 16-41-39.4, means an item or a component of an**
- 18 **item that is produced or distributed for:**
- 19 (1) **sale to a consumer for use; or**
- 20 (2) **the personal use, consumption, or enjoyment of a**
- 21 **consumer.**
- 22 SECTION 4. IC 16-18-2-116.2 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: **Sec. 116.2. "Environmental investigation" means an identification and evaluation of lead hazards from nonstructural sources in a child's environment. The term includes the following:**

(1) **Presentation of results of the identification and evaluation, including recommendations for reducing or eliminating exposure.**

(2) **Education of the child's family concerning:**

(A) **lead hazards found; and**

(B) **temporary and permanent measures to protect the child from further exposure.**

SECTION 5. IC 16-18-2-143, AS AMENDED BY P.L.234-2007, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 143. (a) "Fund", for purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.**

(b) **"Fund", for purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-2.**

(c) **"Fund", for purposes of IC 16-41-39.4, refers to the childhood lead poisoning prevention fund established by IC 16-41-39.4-3.1.**

~~(c)~~ (d) **"Fund", for purposes of IC 16-46-5, has the meaning set forth in IC 16-46-5-3.**

~~(d)~~ (e) **"Fund", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-1.**

~~(e)~~ (f) **"Fund", for purposes of ~~IC 16-41-42~~; IC 16-41-42.2, has the meaning set forth in ~~IC 16-41-42-2~~; IC 16-41-42.2-2.**

SECTION 6. IC 16-18-2-198.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 198.7. "Lead-based paint activities", for purposes of IC 16-41-39.4, has the meaning set forth in IC 13-11-2-118.5.**

SECTION 7. IC 16-18-2-214.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 214.7. "Low income", for purposes of IC 16-41-39.4, means having not more than eighty percent (80%) of the median income level of households in a particular county as determined annually by the federal Department of Housing and Urban Development.**

SECTION 8. IC 16-18-2-292.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 292.7. "Primary prevention", for purposes of IC 16-41-39.4, means the removal or remediation, including the use of interim controls, of lead hazards before lead poisoning of an individual occurs.**

SECTION 9. IC 16-18-2-315.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 315.8. "Remediation" means actions that constitute:**

(1) **abatement (as defined in IC 13-11-2-0.5); or**

(2) **interim control (as defined in 24 CFR 35.110);**

1 **of a lead hazard.**

2 SECTION 10. IC 16-18-2-349.5 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE UPON PASSAGE]: **Sec. 349.5. "Tenant" has the**
5 **meaning set forth in IC 32-31-3-10.**

6 SECTION 11. IC 16-41-39.4-3, AS AMENDED BY P.L.135-2005,
7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 UPON PASSAGE]: Sec. 3. (a) A person that examines the blood of an
9 individual described in section 2 of this chapter for the presence of lead
10 must report to the state department the results of the examination not
11 later than one (1) week after completing the examination. The report
12 must include at least the following:

13 (1) With respect to the individual whose blood is examined:

14 (A) the name;

15 (B) the date of birth;

16 (C) the gender;

17 (D) the race; and

18 (E) any other information that is required to be included to
19 qualify to receive federal funding.

20 (2) With respect to the examination:

21 (A) the date;

22 (B) the type of blood test performed;

23 (C) the person's normal limits for the test;

24 (D) the results of the test; and

25 (E) the person's interpretation of the results of the test.

26 (3) The names, addresses, and telephone numbers of:

27 (A) the person; and

28 (B) the attending physician, hospital, clinic, or other specimen
29 submitter.

30 (b) If a person required to report under subsection (a) has submitted
31 more than fifty (50) results in the previous calendar year, the person
32 must submit subsequent reports in an electronic format determined by
33 the state department.

34 (c) **Except as provided in subsection (d), if a person required to**
35 **report under subsection (a) fails to provide complete information**
36 **within ten (10) days after notification by the state department, the**
37 **state department may, in accordance with IC 4-21.5, assess a civil**
38 **penalty against the person in an amount equal to one thousand five**
39 **hundred dollars (\$1,500) for each incomplete report that is**
40 **submitted after receipt of the notification. Money received by the**
41 **state department under this subsection shall be deposited in the**
42 **fund.**

43 (d) Subsection (c) does not apply to a person who acts in good
44 faith to provide a complete report required under subsection (a),
45 but who:

46 (1) **is unable to collect all of the information required for a**
47 **complete report; or**

48 (2) **provides incorrect information on a completed report.**

49 SECTION 12. IC 16-41-39.4-3.1 IS ADDED TO THE INDIANA
50 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
51 [EFFECTIVE UPON PASSAGE]: **Sec. 3.1. (a) The childhood lead**

poisoning prevention fund is established for the purpose of funding childhood lead poisoning outreach and prevention activities. The fund shall be administered by the state department.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The fund consists of:

- (1) civil penalties assessed under section 3 of this chapter;
- (2) gifts; and
- (3) appropriations from the general assembly.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 13. IC 16-41-39.4-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The lead-safe housing advisory council is established to advise the state department concerning housing related lead poisoning prevention activities.

(b) The advisory council consists of the following members:

- (1) The state health commissioner, or the state health commissioner's designee, who shall serve as the chairperson of the advisory council.
- (2) The director of the Indiana housing and community development authority or the director's designee.
- (3) The local health officer of each of three (3) local health departments, appointed by the state health commissioner to represent a diverse geographic and population mix, or the local health officer's designee.

(4) The following individuals, appointed by the governor:

- (A) A representative of realtors in Indiana.
- (B) A representative of home builders or remodelers in Indiana.
- (C) A pediatrician or other physician with knowledge of lead poisoning.
- (D) A representative of the private lead-based paint abatement industry who is licensed under IC 13-17-14 to perform or supervise lead-based paint activities.
- (E) A representative of a community based organization located in a community with a significant concentration of high risk lead-contaminated properties, as determined by a high prevalence in the community of:
 - (i) low income families having children with lead poisoning; and
 - (ii) housing units that were built before 1978.
- (F) A parent of a child with lead poisoning.
- (G) A representative from a child or health advocacy organization.
- (H) A residential tenant.
- (I) A representative of the paint and coatings industry.

- 1 (J) A representative of public housing administrators.
- 2 (K) A representative of residential rental property owners.
- 3 (L) A representative of licensed lead-based paint activities
- 4 training providers.
- 5 (M) A representative of community action program
- 6 agencies.
- 7 (N) A representative of the banking industry.
- 8 (O) An individual who is licensed as a lead-based paint
- 9 activities inspector under IC 13-17-14.
- 10 (P) A child care provider.
- 11 (c) The advisory council shall meet at least quarterly. The first
- 12 meeting of the advisory council must occur not later than July 1,
- 13 2008.
- 14 (d) The advisory council shall submit to the governor, the
- 15 attorney general, and, in an electronic format under IC 5-14-6, the
- 16 legislative council the following:
 - 17 (1) A preliminary report before November 1, 2008.
 - 18 (2) A final report before November 1, 2009.
- 19 (e) The reports required by subsection (d) shall contain the
- 20 recommendations of the advisory council concerning the following:
 - 21 (1) Development of a primary prevention program to address
 - 22 housing related lead poisoning.
 - 23 (2) Development of a sufficient number of licensed lead
 - 24 inspectors, risk assessors, clearance examiners, individuals
 - 25 who are trained in lead-safe work practices, abatement
 - 26 workers, and contractors.
 - 27 (3) Ensuring lead-safe work practices in remodeling,
 - 28 rehabilitation, and weatherization work.
 - 29 (4) Funding mechanisms to assist child care and residential
 - 30 property owners with the cost of lead abatement, remediation,
 - 31 and mitigation, including interim controls.
 - 32 (5) A procedure for distribution of funds from the Indiana
 - 33 lead trust fund established by IC 13-17-14-6 to pay the cost of
 - 34 implementation of 40 CFR 745 for lead-based paint activities
 - 35 in target housing and child occupied facilities.
 - 36 (6) A program to ensure that the resale of recycled building
 - 37 products does not pose a significant risk of lead poisoning to
 - 38 children.
 - 39 (7) Necessary statutory or administrative rule changes to
 - 40 improve the effectiveness of state and local lead abatement,
 - 41 remediation, including interim controls, and other lead
 - 42 poisoning prevention and control activities.
 - 43 (8) The content of a basic lead training course for child care
 - 44 workers concerning lead hazards that:
 - 45 (A) includes lead-based paint rules awareness; and
 - 46 (B) includes information concerning how the course should
 - 47 be made available to child care workers.
 - 48 (9) For the preliminary report, recommendations for
 - 49 legislation to be introduced in the 2009 session of the general
 - 50 assembly.
- 51 (f) The state department shall staff and provide administrative

and logistical support to the advisory council, including conference telephone capability for meetings of the advisory council.

(g) Each member of the advisory council who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(h) A majority of the members appointed to the advisory council is required for the advisory council to take action on any measure, including final reports.

(i) This section expires July 1, 2011.

SECTION 14. IC 16-41-39.4-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) A retail establishment that sells paint or paint products shall do all of the following:

(1) Offer for sale a lead test kit that is capable of determining the presence of a lead-based paint hazard.

(2) Provide to customers the federal Environmental Protection Agency pamphlet "Protect Your Family from Lead in Your Home" or a similar source of information approved by the state department.

(3) Ensure that at least one (1) employee who provides advice to customers concerning paint and paint products:

(A) attends a training program concerning lead hazards; and

(B) provides training to other employees who provide advice to customers concerning paint and paint products.

(b) A person that sells, offers for sale, or distributes a consumer product shall not remove, erase, or obscure the visibility of a statement that:

(1) the manufacturer or wholesaler of the consumer product has placed on the consumer product or the container or wrapper in which the consumer product is contained; and

(2) specifies that the consumer product contains or may contain lead.

(c) A person shall not sell or offer for sale at wholesale or retail or distribute a consumer product, surface coating material, a food product, or food packaging that:

(1) is a banned hazardous substance under the federal Hazardous Substances Act (15 U.S.C. 1261(q)(1)); or

(2) has been determined by the state department to:

(A) have a lead content that is greater than the lesser of the lead content specifications for lead paint in 16 CFR 1303.2 or state law; and

(B) pose a danger of childhood lead poisoning because the product, material, or packaging is reasonably expected to be accessible to, chewed by, or ingested by a child who is less than seven (7) years of age.

(d) If the state department, based on:

(1) test results performed by a certified laboratory at the state

department's request;

(2) information received from a federal agency; or

(3) other reliable information;

has reason to believe that a person has violated this section, the state department may, with or without a prior hearing, issue to the person a cease and desist order if the commissioner determines a cease and desist order is in the public interest. In addition to all other remedies, the commissioner may bring an action in the name and on behalf of the state against the person to enjoin the person from violating this section.

(e) The state department or a local health department may at any time during regular business hours inspect any premises where consumer products are sold, offered for sale, or distributed to establish compliance with this section.

(f) The state department may seize an item that is sold, offered for sale, or distributed in violation of this section.

(g) The state department shall, not later than May 1, 2009, adopt rules under IC 4-22-2 to implement this section. The rules adopted under this subsection:

(1) may:

(A) establish exceptions under which items described in subsection (c) may be sold, offered for sale, or distributed upon the state department's determination that the risk posed to children by the items is minimal; or

(B) require labeling of an item or signage to reflect that the item contains lead; and

(2) must be consistent with federal law.

SECTION 15. IC 16-41-39.4-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The state department shall, not later than July 1, 2009, adopt rules under IC 4-22-2 to establish a lead-safe work practices training program for contractors, renovators, and remodelers who:

(1) perform work on housing units that were built before 1978; and

(2) disturb lead-based paint in the housing units.

(b) The rules adopted under subsection (a) must:

(1) be consistent with the federal Department of Housing and Urban Development Lead Safe Housing Rule requirements for lead safe work practices training (24 CFR 53.1330(a)(4)); and

(2) provide for training courses taught in English and Spanish.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) The legislative council shall assign to a study committee during the 2008 interim the responsibility to examine issues concerning requirements for:

(1) the division of family resources;

(2) child care providers; and

(3) children who are served by child care providers;

related to childhood lead poisoning prevention, including testing of child care facilities that were built before 1978 and children in

- 1 **child care.**
- 2 **(b) This SECTION expires December 31, 2008.**
- 3 **SECTION 17. An emergency is declared for this act.**
 (Reference is to ESB 143 as reprinted February 27, 2008.)

Conference Committee Report
on
Engrossed Senate Bill 143

Signed by:

Senator Gard
Chairperson

Representative Brown C

Senator Broden

Representative Day

Senate Conferees

House Conferees